United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 16-0653**
	)	**Issued: July 15, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

Appearances:
Stanley R. Stein, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 19, 2016 appellant, through counsel, filed a timely appeal from an October 27, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish left knee conditions causally related to an October 17, 2014 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

On appeal, counsel contends that OWCP erred by not accepting the medical rationale contained in the September 21, 2015 report from her treating physician, Dr. Matthew W. Heckler, a Board-certified orthopedic surgeon. Counsel further contends that the totality of the medical evidence of record is sufficient to establish causal relationship entitling appellant to compensation.

FACTUAL HISTORY

On October 17, 2014 appellant, a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1), alleging that she injured her left knee that day as a result of climbing off a forklift by door 30 to move a bulk mail container (BMC) that was in the way. She stated that she took three steps and her left knee popped while walking on the dock, then she grabbed the BMC to keep from falling to the floor. Appellant did not stop work.

In emergency room reports dated October 17, 2014 Dr. Harold Guadalupe, a Board-certified pediatrician, diagnosed left knee sprain and took appellant off work for three days.

On October 19, 2014 a registered nurse indicated that appellant was seen for a left knee injury and called by radiology for a computerized tomography (CT) scan due to a possible hairline fracture.

A CT scan of the left knee dated October 18, 2014 demonstrated questionable irregularity of the lateral tibial plateau on the frontal projection, small knee joint effusion, and moderate tricompartmental osteoarthrosis. An October 19, 2014 CT scan of the left knee showed no evidence of acute fracture.

In an October 19, 2014 report, Dr. Ramesh C. Gupta, a Board-certified internal and emergency medicine specialist, asserted that appellant was seen on October 17, 2014 for pain in the left knee. He reported that CT scans of the left knee revealed a small effusion and degenerative arthritis, but no evidence of fracture. Dr. Gupta diagnosed acute left knee pain possibly secondary to strain and discharged appellant with an immobilizer and crutches.

On October 21, 2014 Dr. Harvey D. Rhodes, a Board-certified family practitioner, asserted that appellant was seen for severe left knee pain and inability to bend the left knee. He noted that she was injured on October 17, 2014 when she climbed down from a forklift and started to walk forward. After two steps appellant had a painful pop in her left knee and was unable to bend it. On examination, Dr. Rhodes found that she was unable to bend the left knee or do any movement testing on the left knee joint. Appellant had mild pain along the medial joint line and around the patella and was unable to tolerate any ligamentous testing because of her discomfort. There was no redness or heat and the neurovascular examination of the lower leg and foot was intact. Dr. Rhodes diagnosed locked left knee joint and left knee strain/sprain. He noted that he was unable to perform any meaningful left knee examination, but the left knee joint appeared locked in full extension. Dr. Rhodes opined that this raised concern regarding a meniscal tear versus a loose body interfering with joint motion and requested a magnetic resonance imaging (MRI) scan. On October 27, 2014 he reiterated his diagnoses and request for a left knee MRI scan.

An October 27, 2014 MRI scan of the left knee revealed a medial meniscal tear, tricompartmental osteophytosis, tricompartmental chrondromalacia, and synovitis with effusion.

In an October 27, 2014 report, Dr. Rhodes diagnosed internal derangement of the knee and knee and leg sprain/strain. He opined that appellant's conditions were causing temporary total disability and took her off of work from October 27 to November, 3, 2014.

On November 3, 2014 Dr. Heckler diagnosed osteoarthritis of the lower leg and took appellant off of work for three weeks pending injection and reevaluation.

Appellant requested authorization for left knee surgery on November 11, 2014.

In a November 17, 2014 letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. Because of this and since the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It stated that it had reopened the claim for consideration because appellant had now requested authorization for surgery. OWCP requested additional evidence and afforded her 30 days to respond to its inquiries for additional evidence.

In response, appellant submitted a December 9, 2014 narrative statement reiterating the factual history of her claim and a November 26, 2014 report from Dr. Heckler who asserted that she was seen for a follow up of her left knee. Dr. Heckler diagnosed left knee sprain and osteoarthritis and opined that appellant's "advanced arthritis [was] clearly preexisting and not work related."

By decision dated January 6, 2015,[3] OWCP denied the claim as the medical evidence was insufficient to establish a causal relationship between appellant's diagnosed conditions and the October 17, 2014 employment incident.

On January 28, 2015 appellant's counsel requested an oral hearing before the Branch of Hearings and Review and resubmitted medical and diagnostic reports dated October 17 through November 26, 2014. Appellant also submitted new medical evidence, including a surgical report indicating that she underwent a left total knee arthroplasty on December 30, 2014.

In a January 14, 2015 progress report, Dr. Heckler noted that appellant underwent a left total knee replacement on December 30, 2014 and had mild swelling, but no signs of infection. On February 11, 2015 he found mild swelling, but well-healed wounds.

On March 4, 2015 Dr. Heckler reported that appellant felt frustrated because she had plateaued with her flexion nine weeks after surgery. He diagnosed contracture of the left knee and recommended manipulation under anesthesia (MUA) of the left knee. In a March 11, 2015 report, Dr. Heckler noted that appellant had undergone MUA of the left knee on March 6, 2015. He found that her range of motion was improving with daily physical therapy, but she was concerned about a "knot" she felt in the posterior medial aspect of the knee, which she did not

[3] The Board notes that although this decision was dated January 6, 2014, it is a harmless, typographical error.

recall prior to surgery. Dr. Heckler opined that appellant was capable of returning to work, driving her forklift, lifting, pushing, and carrying as her pain tolerance allowed. He opined that her "degree of arthritis was not work related, but as it had previously been asymptomatic, may have been an exacerbation from her work-related injury."

On August 7, 2015 Dr. Heckler opined that appellant aggravated her end-stage arthritis with complete joint space collapse and tearing of the meniscus with the October 17, 2014 employment injury when she was getting off a fork lift, landed wrong on her left leg, and heard a pop. He reiterated that "the arthritic changes were preexisting conditions and not directly cause[d] by her work injury." Dr. Heckler reviewed appellant's medical history and diagnosed torn medial meniscus, osteoarthritis, contracture, and complications due to an internal joint prosthesis of the left knee. He opined that the torn medial meniscus was an acute injury sustained at the time of the initial injury and was directly due to that injury. Dr. Heckler further opined that the osteoarthritis was not directly caused by the work injury based on the review of outside x-rays and testing, but this condition was definitely aggravated by the work injury. He further opined that the history and mechanism of appellant's injury was consistent with the presentation of symptoms and objective findings. Dr. Heckler concluded that the knee contracture and complication of internal joint prosthesis were both causally related to the original injury as they occurred as a result of the initial injury and also that the subsequent surgery was performed as a result of that injury.

A telephonic hearing was held before an OWCP hearing representative on September 3, 2015. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Subsequently, appellant submitted a September 21, 2015 report from Dr. Heckler who explained that it was only after an injury occurred that a patient began to have symptoms of pain or limited range of motion or difficulty doing work or activities of daily living, which was a fairly common occurrence that he had observed many times in his practice. Dr. Heckler indicated that he based his medical opinion on those factors, including her ability to do her work and activities of daily living prior to her injury and her inability to do work and activities of daily living at full function after the injury. He asserted that appellant was not under active treatment for her left knee prior to her injury and required care after the injury due to her pain and limited range of motion, along with her inability to work or do her activities of daily living at full function.

By decision dated October 27, 2015, the OWCP hearing representative affirmed the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable

time limitation period of FECA, that an injury[4] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that her condition relates to the employment incident.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[7]

ANALYSIS

OWCP has accepted that the employment incident of October 17, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant's left knee conditions resulted from the October 17, 2014 employment incident. The Board finds that she has failed to meet her burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the employment incident.

In his reports, Dr. Heckler diagnosed left knee sprain, torn medial meniscus, osteoarthritis, contracture, and complications due to an internal joint prosthesis of the left knee. On August 7, 2015 he opined that appellant aggravated her end-stage arthritis with complete joint space collapse and tearing of the meniscus with the October 17, 2014 work injury when she was getting off a forklift, landed wrong on her left leg, and heard a pop. Dr. Heckler opined that the torn medial meniscus was an acute injury sustained at the time of the initial injury and was directly due to that injury. He further opined that the osteoarthritis was definitely aggravated by the work injury. Dr. Heckler asserted that the history and mechanism of appellant's injury was consistent with the presentation of symptoms and objective findings. He opined that the knee

[4] OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *See T.H.*, 59 ECAB 388 (2008).

[6] *Id.*

[7] *Id.*

contracture and complication of internal joint prosthesis were both causally related to the original injury as they occurred as a result of the initial injury and that her subsequent surgery was due to the work injury. On September 21, 2015 Dr. Heckler explained that it was only after an injury occurred that a patient began to have symptoms of pain or limited range of motion or difficulty doing work or activities of daily living, which was a fairly common occurrence that he had observed many times in his practice. He indicated that he based his medical opinion on those factors, including appellant's ability to do her work and activities of daily living prior to her injury and her inability to do work and activities of daily living at full function after the injury. Dr. Heckler asserted that appellant was not under active treatment for her left knee before her injury, but required care after the injury.

The Board finds that Dr. Heckler did not provide sufficient medical rationale explaining the mechanism of how appellant's left knee conditions were caused or aggravated by getting off a forklift and landing on her left leg on October 17, 2014. Dr. Heckler's opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8] While such a temporal relationship has some positive value, it alone is insufficient to establish a causal relationship. Dr. Heckler did not otherwise sufficiently explain why diagnostic testing and examination findings led him to conclude that the October 17, 2014 incident at work caused or contributed to the diagnosed conditions. Thus, the Board finds that the reports from Dr. Heckler are insufficient to establish that appellant sustained an employment-related injury. The need for medical reasoning is particularly important where Dr. Heckler acknowledges that appellant has a preexisting degenerative condition in the knee.

In his reports, Dr. Rhodes diagnosed locked left knee joint, left knee strain/sprain, and internal derangement of the knee and opined that appellant's conditions were causing temporary total disability. He noted that she was injured on October 17, 2014 when she climbed down from a forklift and started to walk forward. After two steps appellant had a painful pop in her left knee and was unable to bend it. The Board finds that Dr. Rhodes failed to provide a rationalized opinion explaining how factors of her federal employment, such as climbing down from a forklift and walking forward at work, caused or aggravated her left knee conditions. Dr. Rhodes noted that appellant's conditions occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.[9] He failed to provide an opinion adequately addressing how and why the October 17, 2014 employment incident contributed to her conditions. Thus, the Board finds that the reports from Dr. Rhodes are insufficient to establish that appellant sustained an employment-related injury.

The emergency room reports from Drs. Guadalupe and Gupta diagnosed left knee sprain, but did not specifically address whether the October 17, 2014 employment incident caused or contributed to the diagnosed condition. Medical evidence that does not offer any opinion

[8] *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[9] *K.W.*, Docket No. 10-98 (issued September 10, 2010).

regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[10] Likewise, CT and MRI scans are of limited probative medical value as they do not specifically address whether appellant's left knee conditions are attributable to her accepted work injury.[11] Thus, appellant has not met her burden of proof with this evidence.

Appellant also submitted evidence from registered nurses. These documents do not constitute competent medical evidence because a nurse is not considered a "physician" as defined under FECA.[12] As such, this evidence is also insufficient to meet appellant's burden of proof.

On appeal, counsel contends that OWCP erred by not accepting the medical rationale contained in Dr. Heckler's September 21, 2015 report regarding the medical conditions which were caused by the October 17, 2014 work incident. He further contends that the totality of the medical evidence of record is sufficient to establish causal relationship entitling appellant to compensation. However, based on the findings and reasons stated above, the Board finds that appellant has not submitted sufficient rationalized medical evidence to support her allegation that she sustained an injury causally related to the October 17, 2014 employment incident and failed to meet her burden of proof to establish a claim for compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her left knee conditions are causally related to an October 17, 2014 employment incident.

[10] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[11] *Id*.

[12] 5 U.S.C. § 8101(2); *A.C.*, Docket No. 15-1892 (issued February 1, 2016); *E.K.*, Docket No. 09-1827 (issued April 21, 2010) (where the Board noted that reports from physician assistants and registered nurses were of no probative value as they are not physicians under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board